



Pennsylvania Department of Environmental Protection

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August 28, 2000

The Secretary

717-787-2814

Ann E. Goode, Director
Office of Civil Rights (1201 A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits

Dear Ann:

The Pennsylvania Department of Environmental Protection (DEP) appreciates this opportunity to comment on the two draft Title VI guidance documents. Like EPA, Pennsylvania has used the last year to work with various external stakeholders in examining the complex issues related to Title VI of the Civil Rights Act and environmental justice.¹

Pennsylvania has taken special steps to address environmental justice issues by creating an external and internal work group and hosting an all-states meeting. We are submitting the following comments based on recent insights from the work group as well as our experience in administering environmental protection programs. Our suggestions are focused on how your agency can assist states in complying with their obligations under Title VI. We hope that you will incorporate our suggestions in your final draft guidance.

EPA Approval of State Environmental Justice Programs

Pennsylvania is currently in the process of working with various stakeholders to develop recommendations that would more fully incorporate environmental justice principles into our environmental protection programs. This effort has been underway for more than a year, and is expected to produce some very specific recommendations. Pennsylvania DEP has committed to implementing these recommendations to the greatest extent possible. We believe that other states are also taking similar paths. We suggest that EPA take the next step and agree to formally approve such state environmental justice programs if they are adequately protective of Title VI principles.

As presently drafted, the guidelines promise to give "due weight" to state programs; however, it also suggests that EPA will conduct a *de novo* review of state actions. Rather than broadening your review outside of predictable boundaries, we suggest that for those states with approved EJ programs, EPA's investigation be limited to whether the state followed the procedures established within its

¹ The external work group consists of representatives of environmental and community advocacy groups, industry, academia, as well as state and local government agencies.

program. If the state is not in compliance with the approved program, EPA should exercise its enforcement authority as currently defined in the guidance documents with extended timeframes.²

It is critical for EPA to support states for voluntarily adopting comprehensive programs that meet or even exceed federal standards. EPA should consider each state or tribal program within the context of its unique circumstances. Clearly, although the principles of environmental justice are universal, there is not a single "right" approach to meeting the obligations of Title VI.

This recommendation does not suggest that EPA should relinquish or delegate its oversight authority to grant recipients. On the contrary, this concept reinforces EPA's role in environmental and civil rights law by considering EPA and other stakeholders' feedback throughout the program development process. We are confident that this approach will provide the clarity and certainty needed by communities, applicants, local government and state permitting agencies. Give us a reasonable standard to meet and we can work in concert to assure timely disposition of EJ issues.

EPA Authorization of Reallocating Federal Funds

In order to continue this level of effort and successfully implement the recommendations from the stakeholders group, Pennsylvania needs flexibility in reallocating existing federal funds. More specifically, EPA must recognize that implementation of a state environmental justice program is a grant fundable activity.

The Department strongly suggests that EPA re-establish and expand the State and Tribal Environmental Justice Grants Program. Programs of that nature help states comply with federal requirements.

EPA Acknowledgement of State and Local Government Roles

Local zoning plays a significant role in the siting of facilities. Many municipalities are also recipients of federal funding, and are themselves subject to Title VI. As you know, Pennsylvania has a unique local government structure and we depend heavily upon its sole authority for local land use regulations. The revised guidance and the new external guidance should recognize the respective roles of state and local government.³

EPA Coordination of Title VI and Brownfields Issues

Pennsylvania supports EPA's successful implementation of its Brownfields Program. It is worth noting, however, that our efforts to improve the economic viability of American cities must continue to consider environmental justice issues. If it becomes too difficult to redevelop abandoned industrial sites that are located in neighborhoods with minority-dominated populations, there is little prospect of ever achieving the ultimate goals of the civil rights movement.

² Pennsylvania echoes ECOS' comments regarding the unreasonable timeframes in the guidance document. See ECOS' letter dated August 13, 2000.

³ Refer to Pennsylvania's enclosed 1998 comments on the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits*.

EPA Needs to Better Define “Significant Adverse Impact”

We recommend that EPA better define a test for determining a significant adverse impact. The current examples of adverse impact significance are such that it appears that disparate impact analysis may not be triggered.

For example, typically, the incremental inhalation carcinogen risk from a new project is limited to one in a million. U.S. EPA's acceptable target risk levels for hazardous waste burning facilities (cumulative multi-media) are 10^{-5} for cancer and a hazard index of 0.25 for non-cancer effects. The guidance suggests the range of 10^{-6} to 10^{-4} for cancer and a hazard index of 1 for non-cancer. If the hazard index exceeds 1, the permit would not be issued at any location and thus the requirement of disparate impact analysis becomes a moot point. Furthermore, since the multi-media cumulative assessment is not mandated in all cases, these suggested levels could be applied to single media individual source assessments.

Based on discussions with our external work group, we are interested in more clarification on: 1) the appropriate trigger levels for disparate impact analysis, 2) the necessity for conducting cumulative impact assessments and disparate impact analyses, and 3) the appropriate methodology for conducting risk assessments.

EPA Guidance on Cumulative Impact Analysis

The Department welcomes the opportunity to review, comment upon and implement an EPA protocol for cumulative impact analysis that has been accepted by the academic and scientific community.

In conclusion, a national EJ program is a complex, resource intensive, and somewhat state dependent effort. Much like the media specific programs authorized to carry out the federal mandate, a working state EJ program which meets threshold criteria established by EPA should be recognized and approved to carry out the key investigatory aspects of the federal law.

Pennsylvania applauds your efforts and approach to improving the 1998 guidance. Acknowledging that no federal guidance document will provide all of the answers, we believe that our suggestions will minimize future complaints. Furthermore, we endorse the enclosed comments from the Environmental Council of States.

DEP will continue to build upon the productive working relationship with EPA's Region III as well as its Office of Civil Rights. We are also looking forward to developing a program that meets federal standards. Please direct any questions you may have about these comments to Alisa E. Harris, Environmental Equity Coordinator, or to me.

Sincerely,



James M. Seif
Secretary

Enclosures (w/hard copy)

cc: Pa. DEP's Environmental Justice External Work Group
Samantha Philip Fairchild, Director, OECEJ, USEPA

cc: David E. Hess, Executive Deputy Secretary
Donald S. Welsh, Deputy Secretary, State/Federal Relations
Alisa E. Harris, Environmental Equity Coordinator